

### REMARKS

Reconsideration and allowance of the subject application in view the following remarks is respectfully requested.

Claims 1-16 remain pending in the application.

Claims 1-4, 6, 9-11 and 13-14 are rejected under 35 USC 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA, pages 1-20 Applicant's specification) in view of Weiberle et al. (EP 11479929 A1). Applicant respectfully traverses this rejection.

In rejecting claims under 35 USC 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note: In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

The Examiner has failed to make out a prima facie case of obviousness and has failed to identify any suggestion or motivation in the references or in the knowledge of persons of ordinary skill in the art, suggesting the combination of the applied references as asserted by the

Examiner. Regarding claim 1, the Examiner contends that the motivation for the combination would be obvious to reduce the number of sensor elements and connections and thus their associated cost and maintenance efforts. However, there is no evidence that there would be fewer connections by using an accelerometer instead of a gyro.

Applicant contends that the Examiner has stretched the teachings and suggestions of the prior art in an attempt to meet the limitations of claim 1, using Applicant's claim as a template. Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor. Para-Ordnance Mfg. v. SGS Importers Int'l, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995) (citing W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 1553, 220 USPQ 303, 311, 312-13 (Fed. Cir. 1983)). "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (citing In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991)). The Examiner's broad, conclusory opinion of obviousness does not meet the requirement for actual evidence. Accordingly, for at least these reasons, the obviousness rejection of claim 1 should be withdrawn. Claims 3-4, 6, 9-11 and 13-14 recite additional, important limitations and should be allowable for the reasons discussed above with respect to claim 1 as well as on their own merits.

The Examiner contends that it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to use accelerometers to determine longitudinal, vertical and lateral acceleration from accelerometers as taught by Weiberle et al. However, in claim 1, only vertical and longitudinal information is required to determine pitch. For at least this reason, the present invention would not be obtained if Weiberle et al. were combined with AAPA.

Claims 15-16 are rejected under 35 USC 103(a) as being unpatentable over AAPA in view of Weiberle et al. Applicant respectfully traverses this rejection.

Regarding claims 15 and 16, Weiberle et al. is directed to determining wheel slip which is not determined when the vehicle is not moving. Further, claims 15 and 16 are dependent on claim 1 and recite additional, important limitations and should be allowable for the reasons discussed above with respect to claim 1 as well as on their own merits.

Claim 7 is rejected under 35 USC 103(a) as being unpatentable over AAPA and Weiberle et al. in view of Shimuzu et al. (U.S. 5,115,238). Applicant respectfully traverses this rejection.

Shimuzu et al. does not overcome the deficiencies discussed above with respect to AAPA and Weiberle et al. Claim 7 recites additional, important limitations and should be allowable for the reasons discussed above with respect to claim 1 as well as on its own merits. Accordingly, the obviousness rejection should be withdrawn.

Claims 8 in 12 are rejected under 35 USC 103 (a) as being unpatentable over AAPA and Weiberle et al. in view of Kato et al. (U.S. 5,796,613). Applicant respectfully traverses this rejection.

Kato et al. does not overcome the deficiencies discussed above with respect to AAPA and Weiberle et al. Claims 8 and 12 recite additional, important limitations and should be allowable for the reasons discussed above with respect to claim 1 as well as on its own merits. Accordingly, the obviousness rejection should be withdrawn.

All objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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